



California Fair Political Practices Commission

CITY ATTORNEY
LAND USE/ENVIRONMENT
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August 17, 1994

Anthony Saul Alperin
Office of the City Attorney
City of Los Angeles
Eighteenth Floor, City Hall East
200 N. Main Street
Los Angeles, CA 90012-4131

Re: Your Request for Informal
Assistance
Our File No. I-94-177

Dear Mr. Alperin:

This letter is in response to your request for advice concerning the status of an Advisory Board of the Broadway Business Improvement District under the Political Reform Act (the "Act").¹ You have indicated that the contract detailing the operating procedures and administrative responsibilities of the Advisory Board is currently being negotiated; we are, therefore, providing you with informal assistance pursuant to Regulation 18329.²

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.) Further, the Commission's advice is limited to the provisions of the Act.

QUESTION

Is the Advisory Board of the Broadway Business Improvement District, formed pursuant to Parking and Business Improvement Area Law of 1989 (Streets & Highways Code Section 36500, et seq.) (the

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

"BID Act") a "local government agency" and are members of the Board "public officials" within the meaning of the Act?

CONCLUSION

The Advisory Board is a "local government agency" and the persons serving on the Board are "public officials" within the meaning of the Act.

FACTS

The California Legislature enacted the BID Act to promote the economic revitalization and physical maintenance of the business districts of California cities. It accomplishes this by allowing those cities to fund property related improvements and activities through the levy of assessments upon businesses which benefit from those improvements and activities. If a local government chooses to establish a Business Improvement District, all businesses located within the district become subject to the assessment levied by the city.

The BID Act provides that the city council of a city establishing a BID shall appoint an Advisory Board. The statutory duties of such an Advisory Board include the preparation of a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. Such a report may propose changes in the boundaries of the district, improvements and activities to be provided during the year, the basis and method for levying assessments and changes in the classification of businesses within the district. After reviewing and approving the report, the city council is required to adopt a "resolution of intention to levy an annual assessment for that fiscal year" and to take other actions as it deems appropriate, based on the recommendations of the Advisory Board. The city council may designate existing advisory boards or commissions to serve as the Advisory Board for that purpose.

The Los Angeles City Council (hereafter "city council") has established the Broadway Business Improvement District (BBID) for an area within the city's downtown business district. In accordance with Streets & Highways Code Section 36530, the ordinance establishing the BBID provides that the city council shall appoint an Advisory Board for the BBID. In addition to adopting the ordinance, the city council has instructed the city attorney and the city clerk to negotiate a contract between the city and a private, nonprofit organization, Miracle on Broadway Corporation, for the operation of the BBID and the administration of funds paid pursuant to the assessment authorized by the ordinance and the BID Act. You have indicated that although the contract terms have not yet been finalized, it is expected that the contract will authorize Miracle on Broadway, through the Advisory Board that is expected to serve as the board of directors of Miracle on Broadway, to negotiate and enter into contracts to

perform the improvements and activities previously approved by the city council as part of the BBID annual budget. The contract with Miracle on Broadway will also set forth detailed operating procedures and administrative responsibilities of the Advisory Board.

ANALYSIS

A "local government agency" is defined as:

[A] county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

Section 82041, (emphasis added).

Acting under the authority of the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code Section 36500, et seq.), the Los Angeles City Council, by ordinance, established the Broadway Business Improvement District. That ordinance also created the Advisory Board of the Broadway Business Improvement District. Such a board created by a local government agency, the City of Los Angeles, is, on its face, a local government agency under Section 82041.³

³ You have cited the Commission's opinion in In re Siegel, 3 FPCC Ops. 62 (1977) to support your conclusion that the Advisory Board established by the Los Angeles city ordinance is a local government agency. However, the Commission's opinions in Siegel and In re Leach 4 FPCC Ops. 48 (1978) dealt with the issue whether private entities "become so suffused with attributes of sovereignty as to be considered public in nature." (In re Vonk, 6 FPCC Ops. 1 (1981).) In the Siegel Advice Letter, No. A-83-015, the Commission considered the question whether the Southeast Animal Control Authority, an agency formed pursuant to a joint powers agreement, was a local government agency. While concluding that the Authority was a local government agency the Commission stated:

[I]t is not necessary to go through an analysis of the Siegel [opinion] factors to determine that the Authority is an "agency" which is required to adopt a Code. The Pico Rivera Water Development Corporation [the agency in question in the Siegel opinion] was formed as a nonprofit corporation for the purpose of acquiring and operating a water system. Thus, on its face, the Pico Rivera Water Development Corporation was a private entity. Nevertheless, the Commission held that whether an entity is private or public within the meaning of the Act would depend on the true

Section 82048 states in relevant part:

"Public official" means every member, officer, employee or consultant of a state or local government agency, ...

Section 82048, (emphasis added).

Accordingly, a person who serves on the Advisory Board is a "public official" if he or she is a "member, officer, employee or consultant" of the Advisory Board. (Section 82048.)

Regulation 18700 states in relevant part:

"Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decisionmaking authority. A board or commission possesses decisionmaking authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have

nature of the entity and developed four criteria for determining an entity's true nature. In the case of the Authority, however, we have an entity that is clearly public on its face; Sections 6500, et seq., authorize public agencies to enter into an agreement for the joint exercise of a common power. Accordingly, the Siegel [opinion] criteria are not necessary to determine that the Authority is an "agency" within the meaning of the Act.

Siegel Advice Letter, No. A-83-015.

Therefore, it is not necessary to apply the Siegel [opinion] factors to determine that the Advisory Board created by ordinance by the Los Angeles City Council is a local government agency within the meaning of Section 82041.

been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1).

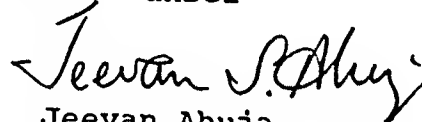
You have indicated that the city council has instructed the city attorney and the city clerk to negotiate a contract between the city and Miracle on Broadway for the operation of the Broadway Business Improvement District and the administration of the funds paid pursuant to the assessment authorized by the ordinance and the BID Act. You believe that the contract will authorize Miracle on Broadway, through the Advisory Board that you expect will serve as its board of directors, to negotiate and enter into contracts to perform the improvements and activities previously approved by the council as part of the Broadway Business Improvement District annual budget. Since it appears that the Advisory Board will be responsible for negotiating and entering into contracts to perform the improvements and activities previously approved, the Advisory Board is making final governmental decisions. Under these circumstances, the persons who serve on the Advisory Board are deemed to be "members", and, therefore, "public officials," within the meaning of Regulation 18700(a)(1). (Section 82048.)

Accordingly, we conclude that the Advisory Board of the Broadway Business Improvement District is a "local government agency" and the persons serving on the Board are "public officials" within the meaning of the Act.

I trust the above discussion responds to your questions. Should you have any further questions regarding this issue, please contact me at 916/322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeevan Ahuja
Staff Counsel, Legal Division

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